



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW

Washington, DC 20240

October 16, 2002

IN REPLY REFER TO:

S72(2623)

Contracting Officer's Technical Instructions (COTI) 2003-01

Memorandum

To: Field Directors, Support Offices, Service Centers, Administrative Program Centers and Washington Office
Attention: Contracting and Procurement Office

From: Acting Manager, Contracting and Procurement Office

Subject: Unauthorized Commitments and Ratifications

Background

This COTI replaces Chapter 8, Unauthorized Procurement (Ratification) of Acquisition, NPS-62, dated January 1986. It provides contracting personnel with updated information regarding unauthorized commitments and ratifications.

Effective Date

This COTI is effective immediately and will remain in effect until superceded or canceled.

References FAR 1.602-3, DIAR 1401.602-3, DIAPR 2001-03

Policy

Commitments by personnel without formally delegated contracting authority do not legally obligate the Government for the expenditure of funds. An unauthorized commitment may be ratified if it would have been otherwise proper if executed by a Contracting Officer. If an unauthorized commitment is otherwise improper, it cannot be ratified and the person committing the unauthorized action may be personally liable for payment of all charges. Unauthorized commitments must be avoided. Individuals responsible for unauthorized commitments may be subject to adverse personnel actions ranging from a Letter of Warning to suspension to removal.

Definitions

1. “Ratification,” as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.
2. “Unauthorized commitment,” as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.
3. “Otherwise proper” means the unauthorized contract action could have been entered into by a Government official (Contracting Officer) with authority to obligate the Government contractually without violating any statutes or regulatory requirements.
4. “Regional Chief of Contracting” means Regional Contracting Program Lead or servicing regional Chief of contracting (or Center/WASO equivalent).
5. “Ratifying Official” means the individual with authority to ratify unauthorized contract actions. ratification of an unauthorized contract action must be signed by the Bureau Procurement Chief (BPC) or an individual with delegated authority in accordance with DIAR 1401.602-3 (b)(2). By delegation of the BPC, ratification actions up to and including \$10,000 may be reviewed for ratification by the Regional Chief of Contracting. Ratification actions exceeding \$10,000 must be submitted to the Bureau Procurement Chief for ratification.

Applicability

This section applies to all unauthorized contract actions, whether oral or written, without regard to dollar value. Examples of unauthorized contract actions are:

- a) Ordering of supplies or services by an individual without contracting authority;
- b) Unauthorized direction of work through assignment of orders or tasks;
- c) Unauthorized addition of new work, or direction which changes the terms or conditions of a contract, by other than the Contracting Officer (may apply to Contracting Officer’s representatives); or
- d) contract actions by a warranted contracting officer on a contract in which the aggregate value exceeds the warrant limitation of the Contracting Officer.

All ratifications are subject to the requirements of this Contracting Officer’s Technical Instruction, and the determination of the Ratifying Official.

Responsibilities

The individual who executed the unauthorized commitment will:

- Prepare a statement regarding the circumstances of the unauthorized commitment; and
- Furnishing all records and documents related to the unauthorized action.

The Supervisor or Chief of the Program Office will:

- Prepare a request for ratification; and
- Recommend and implement the disciplinary action and/or preventative measures taken.

The Park or Office Contracting Officer will:

- Identify the apparent unauthorized contract actions;
- Notify the responsible Program Office;
- Prepare the Determination and Findings document; and
- Issue contract and payment **upon** ratification.

The Regional Chief of Contracting will:

- Review the documentation;
- Obtain legal review from the Office of the Solicitor;
- Make final decision on ratifications up to \$10,000; or
- Transmit the package to the BPC if over \$10,000.

The Bureau Procurement Chief will:

- Review the documentation; and
- Make the final decision on ratifications in excess of \$10,000.

Procedures

1. The Park or Office Contracting Officers is responsible for identifying apparent unauthorized contract actions and notifying the responsible Program Office (an example of a notification is provided as Exhibit 1.)

2. The individual having executed the unauthorized contract action is responsible for preparing a statement supporting or explaining the circumstances of the action to his/her supervisor or the Chief of the Program Office. The responsible individual will also furnish all records and documents related to the unauthorized action as attachments to the statement. The statement shall include:

- a) why the work was necessary and how it benefited the Government;
- b) why normal procurement procedures were not followed;
- c) rationale as to how the contractor was selected;
- d) identification of what other sources were considered; if sole source, provide a Justification for Other Than Full and Open Competition;
- e) what was the scope of work or product;
- f) what was the estimated or agreed contract price; how the price was determined to be fair and reasonable;
- g) what is the status of performance (provide receiving report or other proof of receipt if completed); and
- h) what is the status of payment, and are there any unpaid invoices (outstanding invoices must be attached to the statement).

3. The supervisor or Chief of the Program Office (as appropriate) is responsible for preparing a request for ratification and forwarding it with the signed statement of the responsible individual to the Park or Office Contracting Officer. The supervisor or Chief of the Program Office shall include in the ratification request, a statement regarding the disciplinary action and/or preventative measures that have been or will be established to ensure that similar unauthorized actions will not occur in the future. The supervisor may request a recommendation regarding appropriate disciplinary action and/or preventative measures if desired.

The ratification request must be approved by the second level supervisor of the responsible individual. The Program Office shall include, as an attachment, a copy of the Purchase Request created using the IDEAS Acquisition software, with certified funding sufficient to cover the supplies or services acquired.

4. The Park or Office Contracting Officer will prepare the Determination and Findings document, which concludes that ratification is appropriate in accordance with FAR 1.602-3, and forward the D&F with all supporting documentation to the Regional Chief of Contracting.
5. The Regional Chief of Contracting is responsible for reviewing the documentation, and approving the determination for ratification if the action does not exceed \$10,000. If the action exceeds \$10,000, the Regional Chief of Contracting will forward to the BPC for approval. In accordance with DIAR 1401.602-3(c)(5) and (d), the Regional Chief of Contracting will obtain legal review from the Office of the Solicitor on all ratifications over \$2,500 (DIAPR 2001-03) and all nonratifiable situations.
6. The Bureau Procurement Chief, is responsible for reviewing the documentation, and making a final decision as to ratification of an unauthorized procurement in excess of \$10,000. If ratification is not justified, the BPC shall deny the ratification action request and request initiation of disciplinary action. The BPC will convey the decision to the appropriate Regional Chief of Contracting and promptly return all ratification documents for processing.
7. The Regional Chief of Contracting will return documentation to the Park or Office Contracting Officer.
8. Upon notification of approved ratification, the Park or Office Contracting Officer will issue a purchase order or contract, referencing the date of ratification in the document, and immediately take action to initiate payment. Copies of documentation, including any recommendation for disciplinary action, will be forwarded to the Chief of the Program Office responsible for the action.

Prompt Payment

An invoice for an unauthorized commitment is not considered “proper” until the action has been formally approved by the Ratifying Official. A purchase order/contract should be issued immediately upon notification of the ratification, as the 30-day Prompt Payment Act requirements will commence upon the date of ratification.

EXHIBIT 1

S7215

Memorandum

To: Chief, Division/Branch of _____

From: Chief, Contracting and Procurement

Subject: Identification of Unauthorized Contract Action

Purchase Request (PR) #XXXXXXXXXXXX or invoice #XXXXXX appears to represent an unauthorized contract action. The requested supplies or services were ordered by an individual who does not have contract authority as required by the Federal Acquisition Regulation (FAR), Subpart 1—601. Therefore, the matter must be reviewed for possible ratification action by the Bureau Procurement Chief as required by Department of the Interior Acquisition Regulations, Subpart 1401.602-3. In order for an unauthorized procurement to be reviewed, it will be necessary for the individual's supervisor or Division Chief to prepare a request for ratification (See COTI 2003-1, (copy attached) for a complete description of the content of the request package).

The required documentation will be reviewed by this office and forwarded to the Regional Contracting Office and the Office of the Solicitor for review and subsequent transmittal to the Bureau Procurement Chief. The individual involved in the action may be subject to disciplinary action as appropriate. If documentation provided does not adequately justify approval by the BPC, the individual concerned may be personally liable for the cost incurred.